

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

From: Carla Wardlow, Chief, Technical Assistance Division
Galena West, Counsel, Legal Division
Luisa Menchaca, General Counsel

Date: March 29, 2004

Subject: Adoption of Amendments to Lobbying Disclosure
Regulation 18616—Reports by Lobbyist Employers and
Persons Spending \$5,000 or More to Influence Legislative
or Administrative Action

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At the February Commission meeting, staff presented amendments to regulation 18616 for pre-notice discussion. These amendments would clarify any ambiguity caused by AB 1325 (2001) regarding the reporting requirements of entities that lobby the Public Utilities Commission (“PUC”) in certain circumstances. (Amended regulation 18616 attached as Appendix A.)

As discussed in the memorandum presented at the February Commission meeting for this item (copy attached as Appendix B), “grass roots” lobbying is a qualifying factor to determine whether a person is a \$5,000 filer. According to section 86115, a \$5,000 filer would have a duty to file lobbying reports even if that filer qualifies because of PUC “grass roots” activity alone. Under section 86116(h)(1), “grass roots” lobbying in general would be reported as a total amount spent. However, AB 1325 created section 86116(h)(2) which removes all “payments to influence a ratemaking or quasi-legislative proceeding before the Public Utilities Commission” from this lump sum reporting and makes only those payments to influence which have incurred attorney or witness time reportable at all. “Grass roots” lobbying of the PUC drops out and no reporting is required in this literal reading of the statute. Therefore, while the PUC “grass roots” \$5,000 filers have a duty to file under section 86115(b), they have no information to include in their report, according to section 86116(h)(2).

In order to give meaning to both sections, staff believes that section 86115 must be read to continue to qualify \$5,000 filers under the criteria stated, thereby creating a filing obligation for those filers, and section 86116 must be read to require at least *some* reporting from those filers. The proposed amendments to regulation 18616 would clarify this requirement for filers.

At the February Commission meeting, Scott Hallabrin, Chief Counsel to the Assembly Ethics Committee, spoke to the Commission in support of the change. He stated that he was the staff person who drafted the language of the original bill, AB 1325, which proposed to change the filing requirements for entities that lobby the PUC, to increase those requirements beyond what was required by the Commission's regulations. He explained that the original draft of the legislation would have given PUC lobbyist employers the same reporting requirements as lobbyist employers for other state agencies, thus reclaiming reporting requirements for PUC lobbying. However, after intense pressure from companies which lobby the PUC, a compromise was reached. Instead, the bill was amended to limit the change, to simply mimic the requirements of the Commission's regulations. Mr. Hallabrin then told the Commission that the bill was not proposed to relieve those who lobby the PUC of any filing requirements but to tighten those requirements. He suggested that the Commission fall back on the provision of the Act which requires a liberal interpretation to achieve its purposes. No other public comment was received and no changes were made to the language.

Recommendation

Staff believes that the statutory authority exists to require "grass roots" lobbying activities relating to PUC proceedings be reported¹ and recommends that the clarifying changes to regulation 18616 be incorporated. Subdivision (g)(5)(D) would be changed to exclude payments made for "grass roots" lobbying from the reduced reporting requirements for PUC proceedings so that "grass roots" PUC lobbying would continue to be reported. Additionally, a technical change would be made at 18616(g)(5) to remove the words, "on a separate schedule furnished by the Commission" since the amount is included on the same schedule as the other reporting information and not a separate schedule.

Attachments

Appendix A: Proposed Amendments to Regulation 18616

Appendix B: Pre-notice Discussion of Amendments to Lobbying Disclosure Regulation 18616—Reporting by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action Memorandum

¹ Please see attached copy of the memorandum, "Pre-notice Discussion of Amendments to Lobbying Disclosure Regulation 18616—Reporting by Lobbyist Employers and Persons Spending \$5,000 or More to Influence Legislative or Administrative Action," presented at the February Commission meeting for more information on the statutory authority for this change and the legislative intent of AB 1325.